

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

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|-----------------------------|-------------------------------|
| KAREN BARKES, et al., | : |
| | : |
| Plaintiffs, | : |
| | : |
| v. | : Civil Action No. 06-104-JJF |
| | : |
| FIRST CORRECTIONAL MEDICAL, | : |
| et al., | : |
| | : |
| Defendants. | : |

ORDER

WHEREAS, Magistrate Judge Thyng issued a Report and Recommendation (D.I. 150) dated April 7, 2010, concerning Defendants' Motion To Dismiss Plaintiffs' Second Amended Complaint (D.I. 144);

WHEREAS, no Objections to the Report and Recommendation have been filed;

WHEREAS, Defendants' Motion (D.I. 144) should have been submitted as a Motion For Judgment On The Pleadings under Fed. R. Civ. P. 12(c) as opposed to a Motion To Dismiss under Fed. R. Civ. P. 12(b)(6) because Defendants filed an Answer to Plaintiffs' Second Amended Complaint (D.I. 104) prior to filing the instant Motion;

WHEREAS, the same standard of analysis is applied to a motion to dismiss and a motion for judgment on the pleadings, see Turbe v. Government of Virgin Islands, 938 F.2d 427, 428 (3d Cir. 1991);

WHEREAS, the Court concludes that Judge Thyng's Report and

Recommendation should be adopted because her analysis of the instant action concerning the Motion To Dismiss is equally applicable to the instant Motion when it is addressed as a Motion For Judgment On The Pleadings;

NOW THEREFORE, IT IS HEREBY ORDERED that:

(1) Defendants' Motion To Dismiss For Failure To State A Claim (D.I. 144) will be viewed as a Motion To Dismiss On The Pleadings; and

(2) Judge Thyng's Report and Recommendation (D.I. 150) is **ADOPTED**.

May 31, 2010
DATE


UNITED STATES DISTRICT COURT